IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE STATE OF ILLINOIS, AMERICAN BOTTOM CONSERVANCY, HEALTH AND ENVIRONMENTAL JUSTICE – ST. LOUIS, INC., ILLINOIS STEWARDSHIP ALLIANCE, and PRAIRIE RIVERS NETWORK	)	
	)	
Plaintiff – Intervenors	)	
	)	
v.	)	**Civil Action No. 99-833-MJR**
	)	
ILLINOIS POWER COMPANY and DYNEGY MIDWEST GENERATION, INC.,	)	
	)	
Defendants.	)	
	)	

UNITED STATES' NOTICE OF LODGING OF
PROPOSED CONSENT DECREE MODIFICATIONS

The United States hereby notifies the Court that it has lodged with the Clerk of Court a Joint Stipulation to Modify the Consent Decree that was entered by this Court in the above-captioned matter on May 27, 2005. The United States is **not** requesting any action by the Court at this time on the proposed modifications. Given the nature of the proposed modifications, and pursuant to 28 C.F.R. § 50.7 and U.S. Department of Justice policy, the United States is inviting the public to comment on the proposed modifications for a period of thirty (30) days before seeking judicial approval. The public comment period will begin upon publication of a notice in the Federal Register, which we anticipate will occur shortly. Upon expiration of that comment period, the United States will advise the Court of any comments received and of the United

States' position as to whether the Court should approve and enter the proposed modifications. Below, the United States describes the proposed modifications, explains the reasons therefor. The text of the proposed modifications is set forth in the attached Joint Stipulation to Modify the Consent Decree, signed by all parties.

I. BASIS FOR THE REQUESTED MODIFICATION

Section VI of the Consent Decree, PM Emission Reductions and Controls, establishes a variety of requirements for Dynegy Midwest Generation, Inc. ("DMG") concerning particulate matter emissions at identified units in the DMG System. For seven of these units, the Consent Decree requires that DMG operate the unit so as to achieve and maintain an emissions rate of "not greater than 0.030 lb/mmBTU" or to undertake an alternative procedure defined in the Decree as a "Pollution Control Equipment Upgrade Analysis." Consent Decree ¶ 86. Paragraph 88 describes the manner in which such upgrade analyses will be conducted.

On November 21, 2005, DMG timely submitted a Pollution Control Equipment Upgrade Analysis ("Upgrade Analysis") for the following units: Havana Unit 6, Wood River Unit 4, and Hennepin Units 1 and 2. By letter dated January 6, 2006, the Plaintiffs informed DMG that they did not approve the Upgrade Analysis as submitted. After further correspondence, the parties met on February 24, 2006 to discuss their respective understandings of the content of the Upgrade Analysis, the timing of any resubmission, and conditions affecting DMG's ability to meet certain deadlines in the Consent Decree.

Although the substance of the parties' disagreements as to the content of an "approvable" Upgrade Analysis is not relevant here, the fact of this disagreement affected DMG's ability to timely comply with the provisions of Section VI of the Consent Decree. Specifically, the procedures contained in the Consent Decree for submission, review and implementation of the

Upgrade Analysis, in conjunction with the Plaintiffs' disapproval of the Analysis DMG proposed, created a timing issue for DMG.

As noted above, DMG elected to perform an Upgrade Analysis for four units in the DMG System. The first of these units to face a Consent Decree deadline for PM controls is one of the Hennepin Units, which must meet an emission rate limit of 0.030 lb/ mmBTU by December 31, 2006, unless an acceptable Upgrade Analysis is submitted and approved, containing an alternative schedule and emission limit. *See* Consent Decree ¶¶ 86, 88. Given the time that elapsed between DMG's original decision to undertake an Upgrade Analysis for this unit and the meeting of all parties on February 24, 2006, combined with the growing lead times for equipment and material (resulting from increasing industry demand for pollution reduction technologies), there is no longer sufficient time for DMG to prepare the first Hennepin unit to meet the 0.030 lb/mmBTU limit by the December 31, 2006, deadline.

Accordingly, the parties discussed alternative means of achieving the primary goal of the Consent Decree to improve environmental conditions in a manner that also allowed DMG to meet its obligations in a timely manner. As explained below, the parties agreed that the two modifications described herein and set forth in the attached Stipulation are necessary to achieve those objectives.

II. DESCRIPTION OF THE PROPOSED MODIFICATION

The parties have agreed to two related modifications to the Consent Decree. First, the parties have agreed to delete entirely the provisions that provide DMG with the option to perform a Pollution Control Equipment Upgrade Analysis in lieu of meeting the default emissions rate of 0.030 lbs/mmBTU for any of the seven units named in the Decree. The primary benefit of this deletion is the certainty that DMG will be required to meet the rate set

forth in the Decree by the dates specified. By eliminating this option, the parties also avoid the time and expense associated with developing, reviewing, and potentially disputing, any Upgrade Analyses that DMG otherwise might have submitted. Second, the parties agreed to modify the deadlines by which the two Hennepin units must be in compliance with the 0.030 lbs/mmBTU emission limit. Paragraph 86 of the Consent Decree currently requires DMG to achieve and maintain a PM emissions rate of not greater than 0.030 lb/mmBTU by December 31, 2006 at the first Hennepin Unit, and by December 31, 2010, at the second Hennepin Unit. DMG has discretion as to which of the two Hennepin units (one of which is rated 81 MW and the other of which is rated 240 MW – or approximately three times the size) must be in compliance by the earlier date. Absent the proposed modification, DMG would likely subject the smaller unit to the 0.030 lbs/mmBTU rate first, and allow the larger unit to defer that requirement until December 31, 2010. (Because DMG believes that the December 31, 2006 date is not feasible for either Hennepin unit, it would likely seek to meet this emissions rate by derating the smaller unit.[1])

The proposed modification will require *both* Hennepin units to meet the 0.030 lbs/mmBTU emissions rate by *December 31, 2008*. In effect, then, the smaller Hennepin unit will not be required to meet the lower rate as early as the Consent Decree currently requires, but the larger unit, which emits significantly more PM mass, would meet the lower emissions rate two years sooner than under the current requirements. This slight alteration of the deadlines results in a significant environmental benefit – approximately 750 tons of PM – because the

[1] Hennepin Unit 1, which is approximately one-third the generating capacity of Unit 2, has a permitted limit of 0.10 lbs/mmBTU and, based on March 2005 data, emits PM at a rate of 0.057 lbs/mmBTU. Hennepin Unit 2 has a permitted PM emissions rate of 0.14 lbs/mmBTU and, based on March 2005 data, emits PM at a rate of approximately 0.082 lbs/mmBTU. Absent any modification to the Decree, Hennepin Unit 2 could continue to emit at those rates until December 31, 2010.

potentially increased emissions from the smaller unit is substantially outweighed by the decreased emissions from the larger unit, which would be controlled at an earlier date.[2]

To implement the parties' proposed modification, the parties propose to modify two dates in the table in Paragraph 86, delete the language in Paragraph 86 after the table, and delete Paragraph 88 in its entirety. The precise text of the proposed modification is set forth in the attached Stipulation.

CONCLUSION

Pursuant to Paragraph 177 of the Consent Decree, any material change to the Consent Decree shall become effective only upon approval of this Court. Consistent with 28 C.F.R. § 50.7, however, the United States is not seeking the Court's approval of the proposed modifications until there has been opportunity for public comment. The United States therefore requests that the Court refrain at this time from entering the proposed modifications as an order of this Court. Following the public comment period, the United States will advise the Court as to any comments received during the public comment period and the United States' position regarding entry of the proposed modifications.

Respectfully Submitted,

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice

[1] Based on 2005 data for Hennepin Unit 1, if the deadline for that unit to achieve the 0.030 lbs/mmBTU rate were extended through December 31, 2008, the net increase in PM emissions from that unit would be about 136 tons over the 2 year period. For Hennepin Unit 2, however, advancing the date by which that unit must meet the 0.030 lb/mmBTU emission limit to December 31, 2008 from December 31, 2010 would lower the Unit 2 PM mass PM emissions by 892 tons. Thus, the proposed modifications result in a net environmental benefit of over 750 tons of PM.

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United States Department of Justice

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THE STATE OF ILLINOIS, AMERICAN BOTTOM CONSERVANCY, HEALTH AND ENVIRONMENTAL JUSTICE – ST. LOUIS, INC., ILLINOIS STEWARDSHIP ALLIANCE, and PRAIRIE RIVERS NETWORK	)	
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ILLINOIS POWER COMPANY and DYNEGY MIDWEST GENERATION, INC.,	)	
	)	
Defendants.	)	
	)	

JOINT STIPULATION TO MODIFY CONSENT DECREE

WHEREAS on May 27, 2005, this Court entered a Consent Decree in the above-captioned matter.

WHEREAS following the entry of the Consent Decree, DMG timely submitted a Pollution Control Equipment Upgrade Analysis for several of its units pursuant to Paragraph 86 of the Decree, which was thereafter disapproved by the United States and the State of Illinois.

WHEREAS following the disapproval of DMG's submittal, the parties met and ultimately agreed to seek to amend the Consent Decree in the manner herein set forth.

For the reasons described in the United States' Notice of Lodging of Proposed Consent Decree Amendments, the parties hereby stipulate to amend the Consent Decree in this matter, entered on May 27, 2005, as follows:

1. Modify Paragraph 86 of the Consent Decree as follows:

"86. At each unit listed below, no later than the dates specified, and continuing thereafter, DMG shall operate ESPs or alternative PM control equipment at the following Units to achieve and maintain a PM emissions rate of not greater than 0.030 lb/mmBTU:

Unit	**Date**
Havana Unit 6	December 31, 2005
1st Wood River Unit (i.e., either of Wood River Units 4 or 5)	December 31, 2005
2nd Wood River Unit (i.e., the remaining Wood River Unit)	December 31, 2007
1st Hennepin Unit (i.e., either of Hennepin Units 1 or 2)	~~December 31, 2006~~ December 31, 2008
2nd Hennepin Unit (i.e., the remaining Hennepin Unit)	~~December 31, 2010~~ December 31, 2008
1st Vermilion Unit (i.e., either of Vermilion Units 1 or 2)	December 31, 2010
2nd Vermilion Unit (i.e., the remaining Vermilion Unit)	December 31, 2010

[Remainder of Paragraph deleted.]"

2. Delete Paragraph 88 in its entirety, and replace it with a paragraph placeholder, as follows:

"88. [Omitted.]"

3. All provisions of the Consent Decree unaffected by these modifications shall operate in conjunction with these new provisions in the same manner and to the same extent as did the substituted language in the original Consent Decree.

4. Except as specifically provided in this Order, the Parties intend that all other terms and conditions of the Consent Decree will remain unchanged and in full effect.

FOR THE UNITED STATES OF AMERICA:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice

/s Nicole Veilleux
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Litigation Division

/s Thomas Davis[3]
by: Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General

[3] On Monday, March 20, 2006, Mr. Davis gave Nicole Veilleux, counsel for the United States, permission to sign for him on this electronic filing.

FOR CITIZEN PLAINTIFFS:

/s Shannon Fisk[4]
Shannon Fisk
Attorney
Environmental Law and Policy Center of the Midwest

[4] On Monday, March 20, 2006, Mr. Fisk gave Nicole Veilleux, counsel for the United States, permission to sign for him on this electronic filing.

FOR DYNEGY MIDWEST GENERATION, INC.:

/s Paul E. Gutermann[5]
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[5] On Monday, March 20, 2006, Mr. Gutermann gave Nicole Veilleux, counsel for the United States, permission to sign for him on this electronic filing.